



MINUTES

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, MAY 22, 2007

HUNTINGTON BEACH CIVIC CENTER

2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

6:00 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: *P* *A* *P* *P* *P* *P*
Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley

AGENDA APPROVAL

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SHIER-BURNETT, TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF MAY 22, 2007, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: Speaker
ABSTAIN: None

MOTION APPROVED

A. PROJECT REVIEW (FUTURE AGENDA ITEMS)

A-1. ENTITLEMENT PLAN AMENDMENT NO. 07-001 (PIERSIDE PAVILION MODIFICATION TO MIX OF USES) – Rami Talleh

Rami Talleh, Associate Planner, gave an overview of the request to modify the mix of uses at Pierside Pavilion by eliminating the theatre use and increasing retail, office and restaurant square footage within the building.

Staff stated that currently the Economic Development Department (EDD) is in negotiations with the property owner to amend the Disposition and Development Agreement (DDA) for the property. The EDD and the City Attorney's office have expressed concerns with the processing of this request before the DDA is amended.

Staff indicated that the applicant and EDD will continue to negotiate the Entitlement Plan Amendment (EPA) and if there is not enough time to meet mandatory processing requirements the applicant may withdraw.

Herb Fauland, Acting Planning Manager, introduced Ms. Kellee Fritzal, the new Deputy Director of Economic Development.

B. STUDY SESSION ITEMS:

B-1. PLANNING COMMISSION GOALS 2007 UPDATE – Chair Scandura

Chair Scandura gave an overview of the revised goals and commended the Commissioners on developing them.

Scandura indicated he would like to review the progress of the goals in six months time.

A MOTION WAS MADE BY HORGAN, SECONDED BY SHIER-BURNETT, TO APPROVE THE PLANNING COMMISSION GOALS 2007, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Scandura, Horgan, Dwyer, Farley
NOES: None
ABSENT: Speaker
ABSTAIN: None

MOTION APPROVED

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS):

Herb Fauland, Acting Planning Manager, reviewed the agenda items for the 7:00 p.m. portion of the meeting. He advised of one late communication received from Mr. James Griffith in regard to public hearing Item B-1.

Scandura suggested the public hearing be opened immediately after the staff presentation for item B-1, and any questions from Commissioners should come after the public hearing has been closed, in order to allow all speakers sufficient time to talk and to provide a fair and impartial hearing.

Commissioners and staff discussed the Variance application procedure and costs involved.

Staff reported that Code Enforcement had provided an updated memo on the Robinwood School site and the status of the block wall.

D. PLANNING COMMISSION COMMITTEE REPORTS

D-1. GREEN BUILDING SUBCOMMITTEE REPORT FOLLOW-UP – Chair Scandura

Scandura recommended going forward with submission of the Subcommittee Report to the City Council as soon as possible.

Commissioner Livengood suggested Commissioners meet with Council members to go over the proposal.

Discussion ensued regarding modification of the memorandum, protocol for Planning Commissioner's dialogue with City Council Members, and timelines for presentation of the report to the City Council. Staff indicated the earliest available City Council meeting would be July 16, 2007.

Scott Hess, Planning Director, reported that the Mayor had requested a tour of the Ford Building in Irvine and invited the Commissioners. He stated that a notice will be sent out with more information.

Commissioners Livengood and Shier-Burnett reported on their meeting with the Building & Safety Department. They noted the success of the meeting and the improvements being implemented. Livengood noted that many of the Zucker comments and recommendations had been addressed.

Commissioner Dwyer reported on the Edinger/Beach Blvd Corridor community meeting. He provided an overview of the scope of the project and updated the Commission on the next steps in the process.

Discussion ensued regarding signage, concepts, and public meeting protocol.

In response to a question from Commissioner Farley, staff stated that the Commissioners are being notified of all public meetings.

E. PUBLIC COMMENTS (Regarding Study Session Portion of Meeting):

Mike Adams, the applicant for Study Session Item A-1, spoke in favor of the proposed project and gave an explanation of the two phase plan. He also spoke in favor of the Green Building report and discussed possible incentives with the Commissioners.

F. PLANNING COMMISSION COMMENTS:

Commissioner Shier-Burnett requested the planners include the zip code with the "Location" on all staff reports. She also inquired as to the Zoning Administrator's action on the Temporary Use Permit for Surf City Tuesday Nights. Staff reported that the Zoning Administrator continued the item to the June 6 Zoning Administrator's meeting.

Chair Scandura commended Code Enforcement staff for keeping the Planning Commissioners apprised on the Robinwood School enforcement of the dilapidated block wall.

Scandura referenced the Urban Land Institute Conference to be held at the Hyatt Regency Huntington Beach on June 14-15.

Scott Hess reported on the status of the Home Depot project. He also asked the Planning Commission about a possible Green Buildings tour.

6:30 P.M. – RECESS FOR DINNER

7:00 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE – Led by Commissioner Farley

ROLL CALL: *P A P P P A P*
Shier-Burnett, Speaker, Livengood, Scandura, Horgan, Dwyer, Farley

AGENDA APPROVAL

A MOTION WAS MADE BY HORGAN, SECONDED BY SHIER-BURNETT TO APPROVE THE PLANNING COMMISSION AGENDA OF MAY 22, 2007, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Livengood, Scandura, Horgan, Farley
NOES: None
ABSENT: Speaker, Dwyer
ABSTAIN: None

MOTION APPROVED

A. ORAL COMMUNICATIONS - NONE

B. PUBLIC HEARING ITEMS:

B-1. VARIANCE NO. 07-002 (PERKINS RESIDENCE): **Applicant:** Gary C. Maxwell
Request: To permit construction of a 350 sq. ft. addition to a single-family residence with a 5'-0" street side setback, in lieu of the code required 10'-0" minimum setback. **Location:** 20091 Crown Reef Lane
Project Planner: Ron Santos

STAFF RECOMMENDATION: Motion to: "Deny Variance No. 07-002 with suggested findings for denial."

The Commission made the following disclosures:

- Commissioner Shier-Burnett visited the site and spoke with staff.
- Commissioner Livengood visited the site and spoke with the applicant and staff.
- Commissioner Horgan visited the site.
- Chair Scandura visited the site and spoke with staff.
- Commissioner Farley visited the site and spoke with staff.

Chair Scandura explained that the public hearing would be opened immediately after the staff presentation and recommendation, and the Commission questions would follow.

Ron Santos, Associate Planner, gave a PowerPoint presentation of the proposed project and outlined the findings for denial.

THE PUBLIC HEARING WAS OPENED.

Tom Perkins, property owner, spoke in support of the project. He made note of the stucco fence surrounding the property and that signatures were received from neighbors who prefer an addition to the home rather than a trailer home parked on the property. He also indicated his belief that the project would benefit the City due to the architect and contractor and their employees being local residents, improved property value, new permits being generated, and additional property taxes.

Sandra Perkins, property owner, described how over the past ten years the backyard of her property has been groomed as a natural habitat for butterflies and birds. She stated that the options of building up or out into the backyard were not feasible due to: not wanting to enclose the kitchen window; damage to the natural habitat; difficulty in climbing stairs for herself, her

husband, and her elderly mother. Mrs. Perkins presented pictures of the natural habitat area to the Commissioners.

Gary Maxwell, architect, stated he is well aware of the code requirements in the City but felt that this addition to the side of the home was the best option because the only other option was to build out into the courtyard area and due to the configuration of the house that would entail closing off the kitchen window. He noted a nearby property that had received a similar variance approval in 1983.

Richard Paul, 8651 Viscount Drive, spoke in support of the project. He stated he had reviewed the plans and feels the project to be beneficial to the neighborhood and consistent with the variance approved to the similar property within the tract.

Joe Sheldon, 20151 Crown Reef Lane, spoke in support of the project. He did not feel that traffic noise would be a problem due to the length of Viscount Drive and that the addition was justified and would be an improvement within the neighborhood. He requested the Commission approve the variance.

Herb Fauland noted the late communication received from James Griffith, dated May 18, 2007, in which he outlines two issues of concern in opposition to the project.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

In response to a question from Commissioner Farley, Santos stated that the findings outlined in the staff report are required findings per the code and pursuant to state law.

Santos read the findings at Commissioner Horgan's request.

In response to Horgan's question Santos indicated that a Conditional Exception was approved in 1983 for a similar property. He noted that the term "Conditional Exception" is no longer used and is now referred to as a Variance.

Commissioner Livengood stated he visited the property that was approved in 1983 and it was exactly the same as the Perkins' request. He asked the applicant to describe their plans for the gate area.

Mrs. Perkins stated that they planned on enclosing the gate area into a solid wall the same height as the existing wall.

Commissioner Shier-Burnett requested clarification regarding the courtyard, the height of the wall and the yard reduction. She asked Mr. Maxwell if his clients were made aware of the 10 ft. setback code requirement and he confirmed they were informed and are well aware of the code.

In response to a question from Commissioner Farley, Santos stated that no permit records were found for the wall; therefore it was built at the same time as the house or without permits and it currently does not meet vision clearance requirements. Mrs. Perkins stated the wall was built because originally there was a swimming pool. Staff confirmed that permits are on record for removing a swimming pool.

In response to a question from Chair Scandura, Santos confirmed the 10 ft. setback requirement from the property line and in regard to the 1983 Conditional Exception, the staff at that time had recommended denial and the findings indicated there was a hardship but did not indicate what the hardship was.

Commissioner Horgan asked if high walls were required and Santos stated they are allowed but not required in the City.

Livengood stated that with the wall there, the addition would hardly be visible and would not create a problem for foot traffic or auto traffic because it is staying within the confines of the wall. He noted that in 1983 the Commission approved a similar variance and in his opinion the 10 ft. setback is going to create a hardship for the family. He felt that the aesthetic and safety issues were covered. He stated that the existing wall is going to hide the addition, and only the roofline would be visible. He indicated that he would be supporting this project.

Horgan stated her concern with setting a precedent. She agreed that this addition seems minimal and is only one story and the circumstances for this individual case seem necessary because of the family situation. She stated that if the Planning Commission were to grant this variance that it would not preclude somebody from proposing to build two stories and going out five feet. She voiced her displeasure with variances and the conflict involved.

Farley stated that staff had cautioned Commissioners that each variance request must be taken on a case-by-case basis and even if a variance is granted the Commission is not necessarily setting a precedent. He stated his concern was not with the precedent issue, and indicated that it is not a question of making a judgment call based on how the Commission feels about the family but whether or not the legal findings could be made. He could not see any way to meet the findings. He indicated that he could not base his decision today on a decision made in 1983 that may have been inappropriate.

Shier-Burnett concurred with Farley and agreed that the approval or denial of a request does not set a precedent for future requests; however it does provide a perceived precedence. She shared her own experience in applying for a Conditional Use Permit where there was a similar situation. She stated that based on current law, the findings made in 1983 would not be legal today and at the time they were not challenged, therefore this is not something she would base a decision on.

Shier-Burnett stated that she finds the Perkins to be absolutely lovely people and they have done a fantastic job with their home.

Scandura commented on the difficulty of the decision to be made and stated his understanding of the very definite need the Perkins have. At the same time he expressed concern in making the four specific findings. He indicated that it would be creating a special privilege to approve the request because the code for the entire City says that corner lots must be 10 ft from the street. One variance was approved in 1983 by a different Planning Commission and although their reasons are unknown, we do know staff recommended against it. He stated that if this variance is approved then other property owners are going to want the same. He stated another reason variances may be granted is due to an oddly configured lot and there is nothing significant about this lot. It has a rectangular shape and fairly flat slope. It doesn't have a hill or major slope to it which often causes a hardship and therefore he felt it very difficult to make the findings.

Livengood reiterated that the Commission needs to look at each project individually. He stated that this project is unique because it is a single-story home; the wall is on the property line which screens the building. He felt that this project was not comparable to a two story addition.

Scandura stated that the Commission is not being asked to look at the design of the house or the design of the addition. What they are being asked to look at is the building and whether or

not it encroaches into the setback area. He felt that if this variance is granted and similar variances not granted to property owners who want to expand into that 10 ft setback, then essentially the Commission would be granting this applicant a special privilege.

Scandura stated that expansion into side yard setbacks is something that needs to come before City Council for a policy decision and possible change of code. He didn't feel it appropriate that every time someone wanted to expand into their setback they should have to request a variance.

In response to a question from Commissioner Horgan, staff explained that in the residential low density zone there is no open space requirement. There is 50 percent maximum lot coverage but not an open space requirement which is a requirement for multi family residential projects only.

Discussion ensued between Commissioners regarding the conflict between the family's special needs, making the legal findings, other options available for the addition, and setting a precedent for future requests,

Scandura reiterated that if the City is to allow building into side yard setback areas especially in regularly shaped lots that's something that needs to be reflected in an ordinance change rather than having to go through the variance process. He stated that the codes were set up to provide uniform setbacks and he expressed his concern with granting a special privilege and the precedence it may be creating.

A MOTION WAS MADE BY FARLEY, SECONDED BY SCANDURA, TO DENY VARIANCE NO. 07-002 WITH FINDINGS FOR DENIAL, BY THE FOLLOWING VOTE:

AYES: Shier-Burnett, Scandura, Horgan, Farley
NOES: Livengood
ABSENT: Speaker, Dwyer
ABSTAIN: None

MOTION APPROVED

FINDINGS FOR DENIAL

VARIANCE NO. 07-002

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15305, Class 5 of the CEQA Guidelines, which states that minor setback variances not resulting in the creation of any new parcel are exempt from further environmental review.

FINDINGS FOR DENIAL VARIANCE NO. 07-002:

1. The granting of Variance No. 07-002 to permit construction of a 350 sq. ft. addition to a single-family dwelling at a five ft. street side yard setback, in lieu of the code required ten ft. minimum setback would constitute a grant of special privilege inconsistent with limitations

upon other properties in the vicinity and under an identical zone classification. The subject property exhibits no unique conditions which justify approval of a reduced setback.

2. No special circumstances applicable to the subject property, including the size, shape, topography, location or surroundings, exist which serve to deprive the property owner of privileges enjoyed by other properties in the vicinity and under identical zone classification when the strict application of the zoning ordinance is required. The subject property, which is 6,500 sq. ft. in area and 65 ft. in width, is both larger and wider than the minimum lot area (6,000 sq. ft.) and width (60 ft.) required in the RL zone. Moreover, the lot is regular/rectangular in shape and has no topographical constraints or unique surroundings which serve as a basis for approval of a reduced setback.
3. The granting of the variance is not necessary to preserve the enjoyment of one or more substantial property rights. A review of permit records for other properties in the vicinity indicates that the existing dwelling is not comparably undersized, especially when compared to other single-story dwellings in the neighborhood. Moreover, other opportunities exist for expanding the house in conformance to HBZSO standards.
4. The granting of the variance will be materially detrimental to the public welfare or injurious to property in the same zone classification. Adherence to the ten ft. setback requirement is necessary to maintain a consistent and compatible land use pattern in the neighborhood and provide for adequate protection from noise impacts associated with traffic on the adjacent street.
5. The granting of the variance will adversely affect the General Plan. It is inconsistent with the Land Use Element designation of RL (Residential Low-Density) on the subject property because. Denial of the requested variance furthers the General Plan Objectives and Policies by requiring adherence to the applicable provisions of the Zoning & Subdivision Ordinance, which serves to implement the policies of the General Plan.

C. CONSENT CALENDAR

C-1. PLANNING COMMISSION MINUTES DATED APRIL 10, 2007

RECOMMENDED ACTION: Motion to: "Approve the April 10, 2007, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY SHIER-BURNETT, SECONDED BY FARLEY, TO APPROVE THE PLANNING COMMISSION MINUTES OF APRIL 10, 2007, BY THE FOLLOWING VOTE:

AYES:	Shier-Burnett, Livengood, Scandura, Horgan, Farley
NOES:	None
ABSENT:	Speaker, Dwyer
ABSTAIN:	None

MOTION APPROVED

D. NON-PUBLIC HEARING ITEMS - NONE

E. PLANNING ITEMS

- E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING**
Scott Hess, Director of Planning - reported on the items from the previous City Council meeting.
- E-2. CITY COUNCIL ITEMS FOR NEXT MEETING**
Scott Hess, Director of Planning - reported on the items scheduled for the next City Council meeting.
- E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING**
Herb Fauland, Acting Planning Manager - reported on the items scheduled for the next Planning Commission meeting.

F. PLANNING COMMISSION ITEMS

F-1. PLANNING COMMISSION REQUEST ITEMS – NONE

F-2. PLANNING COMMISSION COMMENTS

Commissioner Shier-Burnett – None

Commissioner Speaker – Absent

Vice-Chairperson Livengood – None

Chairperson Scandura – Acknowledged the difficulty involved with the action taken on item B-1 and commended the Commissioners for their careful decision.

Commissioner Horgan – None

Commissioner Dwyer – Absent

Commissioner Farley – None

ADJOURNMENT:

Adjourned at 8:00 p.m. to the next regularly scheduled meeting of June 6, 2007.

APPROVED BY:



Scott Hess, Secretary



John Scandura, Chair